IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WA.No. 732 of 2006(T)

AGAINST THE JUDGEMENT IN WPC.10667/2005
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APPELLANTS: RESPONDENTS
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1. KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY,
VYDYUTHI BHAVAN,
THIRUVANANTHAPURAM.

2. THE CHAIRMAN,
THE KERALA STATE ELECTRICITY BOARD,
VYDYUTHI BHAVANAM,
THIRUVANANTHAPURAM.

3. THE CHIEF ENGINEER,
(HUMAN RESOURCES MANAGEMENT),
K S E BOARD,
VYDYUTHI BHAVANAM,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.SANTHALINGAM, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

RESPONDENTS: PETITIONER/IST RESPONDENT
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1. TOMY JACOB.C,
SENIOR SUPERINTENDENT,
K S E BOARD,
ELECTRICAL SECTION,
RAMAPURAM.

2. THE STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
SOCIAL WELFARE DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.K.VIJAYAMOHAN FOR R1
GOVERNMENT PLEADER SHRI. SANDESH RAJA FOR R2

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26/03/2007, THE COURT ON 2/4/2007 DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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W.A.No.732 of 2006
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Dated this the 2nd day of April, 2007.

JUDGMENT

Antony Dominic,J.

Respondents 2, 3 and 4 in the Writ Petition filed by the first respondent herein are the appellants. The Writ Petition was filed seeking a direction to the first appellant, the Kerala State Electricity Board, to provide reservation for appointment to the cadres of Assistant Accounts Officer, Accounts Officer and Senior Accounts Officer for appointment from physically handicapped persons and a further direction to the first and second appellants to consider Ext.P5 and take appropriate action in accordance with the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act') and Ext.P3 Government Order. The Writ Petition was heard by a learned single Judge of this Court and was disposed of by judgment dated 4th April, 2005 directing the first appellant - Board to identify and classify posts in Class I and Class II categories in the service of the Board for appointment of persons with disabilities in terms of the provisions of the Act and pass appropriate orders within three months from the date

of receipt of a copy of the judgment.

2. When the appeal came up for hearing before us, the only submission made by the counsel for the appellants is that in terms of Section 32 of the Act, it is only for the appropriate Government to identify posts, which can be reserved for persons with disabilities. According to him, the import of Section 32 of the Act being as stated above, the learned single Judge ought not have directed the first appellant - Board to identify the posts in Class I and Class II categories in the service of the Board for appointment of persons with disabilities in terms of the Act.

3. We have heard counsel for the first respondent and the Government Pleader also.

4. After hearing the parties on either side, we are inclined to agree with the submissions made by the counsel for the appellants. Section 32 of the Act provides as follows:

> "32. **Identification of posts which can be reserved for persons with disabilities**:- Appropriate Government shall -
>
> (a) identify posts, in the establishments, which can be reserved for the persons with disability.
>
> (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology."

A reading of the above Section would show that it is for the Appropriate Government to identify posts, which can be reserved for persons with disabilities. "Appripriate Government" has been defined in Section 2(a) of the Act and in terms thereof, it is the State Government which is the Appropriate Government in so far as the the first appellant is concerned. The first appellant herein being an establishment as defined in Section 2(k), it is evident that it is the statutory obligation of the State Government to identify the posts, which can be reserved for persons with disabilities.

5. A Division of this Court in the case of **Ratheesh Babu** v. **U.G.C.** - 2004(30 K.L.T. 158, has held that Section 32 of the Act mandates that Appropriate Government shall identify posts, in establishment, which can be reserved for persons with disabilities. Proceeding further, referring to the judgment of the Apex Court in **All Kerala Parents Assn.** v. **State of Kerala** – 2002 (3) K.L.T. 423 as well as a Full Bench of this Court in **Benny** v. **State of Kerala** – 2003 (1) K.L.T. 850, the Division Bench of this Court held as follows:

> "State Government have got a statutory obligation to identify posts. Which are the posts to be identified has to be left to the discretion of the Government, depending upon the nature of the posts and its requirement."

6. The statutory provisions as interpreted in the judgments referred to above, make it clear that it is the obligation of the State Government to identify posts in terms of Section 32 of the Act. In that view of the matter, the direction issued by the learned single Judge requiring the first appellant to identify and classify posts, cannot be sustained and needs to be modified.

4. Accordingly, we dispose of this Writ Appeal modifying the direction issued by the learned single judge and directing that the second respondent, State of Kerala, shall identify the posts in Class I and Class II categories in the service of the first appellant for appointment of persons with disabilities in terms of the provisions of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and pass appropriate orders within three months from the date of receipt of a copy of this judgment.

Writ Appeal will stand disposed of as above. No costs.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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